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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID CERVANTES, ANTONIO GUILLEN, JAMES PEREZ, SAMUEL LUNA, GUILLERMO SOLORIO, TRINIDAD MARTINEZ, GEORGE FRANCO, STEVEN TRUJILLO, SALVADOR CASTRO, BRYAN ROBLEDO, ALEX YRIGOLLEN, JUAN SOTO, EDGARDO RODRIGUEZ, ROBERT MALDONADO, and ERIC ZARATE,

Defendants.

Case No. CR 21–00328 YGR

MOTION TO QUASH WRIT OF HABEAS CORPUS AD PROSEQUENDUM

Court: Courtroom 1 – 4th Floor
Hearing Date: February 14, 2022
Hearing Time: 1 p.m.

NOTICE, MOTION, AND INTRODUCTION

On August 25, 2021, a grand jury returned a three-count indictment charging the above-captioned defendants with participating in a racketeering conspiracy in violation of 18 U.S.C. § 1962(d). Dkt. No. 1. On August 27, 2021, the Court issued a writ of habeas corpus *ad prosequendum* for the defendants. Dkt. No. 4. As a result, the defendants were transported from California State Prison Solano ("CSP Solano"), a state prison in this District where they were serving their state sentences, to United States Penitentiary Atwater ("USP Atwater"), a high security federal prison in the Eastern District of California that does not ordinarily house pretrial detainees.

The defendants, through counsel, now move to quash the writ of habeas corpus *ad prosequendum* and for their immediate return to state custody. The motion is based on this notice and motion, the following memorandum of points and authorities, and applicable constitutional, statutory, and case authority, and any evidence and argument presented at the hearing of this motion.

ARGUMENT

Federal courts have limited statutory authority to issue writs of habeas corpus under 28 U.S.C. § 2241(a). *Rasul v. Bush*, 542 U.S. 466, 473-75 (2004). District courts may grant a writ of habeas corpus only "within their respective jurisdictions." 28 U.S.C. § 2241(a). Although the initial statutory authority for issuing writs of habeas corpus did not expressly include the writ of habeas corpus *ad prosequendum*, the Supreme Court interpreted the words "habeas corpus" to include the writ "necessary to remove a prisoner in order to prosecute him in the proper jurisdiction wherein the offense was committed." *Carbo v. United States*, 364 U.S. 611, 615 (1961) (citing *Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 98 (1807)). In 1948, a federal court's authority to issue the writ *ad prosequendum* was made explicit with the enactment of 28 U.S.C. § 2241, which provides that the "writ of habeas corpus shall not extend to a prisoner unless ... [i]t is necessary to bring him into court to testify or for trial." 28 U.S.C. § 2241(c)(5); *see also United States v. Mauro*, 436 U.S. 340, 357-58 (1978) (reviewing case law and legislative history of writs *ad prosequendum*).

An *ad prosequendum* writ exists to facilitate a *temporary* transfer of custody. In *Mauro*, the Supreme Court distinguished between a writ of habeas corpus *ad prosequendum* and a detainer. 436

U.S. at 358. "[A] detainer merely puts the officials of the institution in which the prisoner is incarcerated on notice that the prisoner is wanted in another jurisdiction for trial upon his release from prison." *Id.* In contrast, a writ of habeas corpus *ad prosequendum* is a federal court's order "requiring the *immediate* presence of the prisoner" or "demanding the prisoner's presence in federal court on a *certain day*." 436 U.S. at 358, 362 (emphasis added). Its "role and functioning" is to "secure the presence, for purposes of trial, of defendants in federal criminal cases, including defendants then in state custody." 436 U.S. at 358.

Here, the government's use of the writ of habeas *corpus ad prosequendum* to transfer the defendants to federal custody in a different District pending trial rather than for their appearance at a specific court proceeding defies the plain text of section 2241(c)(5) and Supreme Court authority on the "role and functioning" of the writ. *Mauro*, 436 U.S. at 358. The defendants are being held in federal custody *not* "to bring [them] into court to testify or for trial," 28 U.S.C. § 2241(c)(5), or for their "immediate presence" in court "on a certain day," *Mauro*, 436 U.S. at 358, 362—but pending their trial, which may not be scheduled for years. *See, e.g., United States v. Henry Cervantes*, No. CR 12-00792 YGR (N.D. Cal.) (defendants detained pretrial from 2012 to 2016 in a Nuestra Familia case). Such federal pretrial detention exceeds the limited scope of the writ of habeas corpus *ad prosequendum*. Historically, the writ was used only to secure the presence of a state prisoner for specific federal court appearances, not for the wholesale custodial transfer of a state prisoner into federal pretrial detention. *See, e.g., Carbo*, 364 U.S. at 622 (state prisoner returned to custody in New York during seven-month interim between arraignment in the Southern District of California and trial); *see also Johnson v. Gill*, 883 F.3d 756, 759 (9th Cir. 2018) (observing that district court issued writs of habeas corpus *ad prosequendum* for the defendant on three discrete days "so that he could attend federal court proceedings"); *Thomas v. Brewer*, 923 F.2d 1361, 1362-63 (9th Cir. 1991) (ad *prosequendum* writs issued by district court for defendant's appearance on particular days).

Nor does the defendants' transfer into federal custody effectively secure their presence in federal court "in the proper jurisdiction wherein the offense was committed." *Carbo*, 364 U.S. at 615. The offense in this case was allegedly committed in the Northern District of California, but the defendants are being detained in the Eastern District of California, which is outside of this Court's

jurisdiction. Additionally, USP Atwater is two hours farther away from the Court: CSP Solano is only a two-hour round-trip drive from the courthouse, while USP Atwater is a four-hour round-trip drive. The writ's effect of placing the defendants outside of the Court's jurisdiction and increasing the distance between the defendants and the Court not only undermines the writ's purpose but also interferes with the defendants' Sixth Amendment rights to counsel and due process. *See United States v. Irwin*, 612 F.2d 1182, 1185 (9th Cir. 1980) ("It is clear that government interference with a defendant's relationship with his attorney may render counsel's assistance so ineffective as to violate his Sixth Amendment right to counsel and his Fifth Amendment right to due process of law."). Moreover, the government used the writ not merely to transfer the defendants to another District, but also to take defendants to Moffett Federal Airfield to be interviewed by federal agents, in violation of their constitutional and statutory rights. *See* Declaration of John Paul Reichmuth In Support of Motion to Modify Conditions of Confinement, Exhibit 4, ¶ 4; U.S. Const. amend. V; 18 U.S.C. § 3501(a); Fed. R. Crim. P. 5(a)(1)(A).

A writ of habeas corpus ad prosequendum permits the federal sovereignty to "successfully" "borrow" a state prisoner to secure their presence in "federal court on a specific date" "without interrupting the state's priority of jurisdiction, and its right to enforce its sentence." *United States v. Bylund*, No. 321CR00051SLGMMS3, 2021 WL 2269459, at *2–3 (D. Alaska June 3, 2021) (quashing writ of habeas corpus *ad prosequendum* and placing state prisoner back in state custody after federal authorities "borrowed" state prisoner for arraignment). It does *not* permit what the federal sovereignty has done here: transfer a state prisoner to federal custody in an unrelated District not for a specific federal court appearance but for an interview by federal agents followed by an indeterminate period of pretrial detention.

CONCLUSION

The writ of habeas corpus *ad prosequendum* should be quashed, and the defendants should be returned to state custody.

Dated: January 10, 2022

Respectfully submitted,

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